



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: RRRS Enterprises, Inc.

File: B-241512; B-241512.2

Date: February 12, 1991

Michael R. Weremblewski, Esq., Militello & Antonucci, for the protester.
Herbert F. Kelley, Jr., Esq., Department of the Army, for the agency.
M. Penny Ahearn, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest issue is considered abandoned where agency's report specifically addresses argument raised in initial protest and protester fails to rebut the agency's position in its comments on the report.
2. Protester's new and independent ground of protest first raised in comments on agency's report is dismissed as untimely where later-raised issue does not independently satisfy timeliness rules of General Accounting Office's Bid Protest Regulations requiring protest to be filed within 10 working days after basis of protest is known or should have been known.
3. Protest of unequal competition is denied where, contrary to protest allegation, there is no evidence that agency gave awardee advance notice of availability for hire of incumbent contractor's personnel.
4. Protest against evaluation of awardee's proposal is dismissed where protester would not be in line for award if allegations were resolved in its favor and, therefore, it is not an interested party.

DECISION

RRRS Enterprises, Inc. protests the rejection of its offer as unacceptable and award of a contract to North Operations and Maintenance, Inc., under request for proposals (RFP) No. DAKF36-90-R-0004, issued by the Department of the Army for management and operation of the Personal Property Shipping

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Office (PPSO) at Fort Drum, New York. RRRS contends that discussions regarding its proposals were not meaningful, the competition was unequal, and North's experience was improperly evaluated.

We dismiss the protests in part and deny them in part.

The RFP requested firm, fixed prices for a 1-year base period and four 1-year options, and provided for award to the lowest priced, technically acceptable offeror. The RFP set forth two evaluation factors of equal importance for determining technical acceptability: quality of technical approach to meet the stated requirements, and technical experience.

Three firms submitted initial proposals, all of which, due to informational deficiencies, were rated technically unacceptable under an adjectival rating system of acceptable, marginal, and unacceptable. Following discussions on the deficiencies and submission of revised offers, the initial technical ratings were as follows: North-acceptable, Trionics Contracting Services-marginal, and RRRS-unacceptable. Following a second round of discussions and best and final offers (BAFO), technical ratings and proposed costs were as follows:

<u>Offeror</u>	<u>Technical Rating</u>	<u>Cost</u>
North	Acceptable	\$2,341,464
Trionics	Acceptable	\$2,852,744
RRRS	Unacceptable	\$1,790,519

While RRRS' proposed cost was lower than North's, the firm's proposal was determined unacceptable due to its failure to set forth either an approach to carry out the RFP requirements, or a plan for quality control. The agency awarded the contract to North on September 19, 1990, as the lowest priced, technically acceptable offeror.^{1/} Following an October 5 debriefing, RRRS filed this protest.

In its initial protest, RRRS alleged that the discussions conducted by the Army did not direct the firm to the evaluated deficiencies in its proposal concerning its operational and quality control plans. The agency fully responded to this basis of protest in its report, maintaining that the oral and written discussions it conducted were sufficient to notify the

^{1/} After receipt of BAFOs, North reduced its proposed price to \$2,288,727. The agency accepted this as a late modification of an otherwise successful proposal with terms more favorable to the government and made award in this reduced amount. See Federal Acquisition Regulation (FAR) § 52.215-10(g).

protester of the deficiencies.2/ RRRS has not disputed or rebutted the agency's response. Where an agency specifically addresses issues raised by the protester in its initial protest and the protester fails to rebut the agency's response in its comments, as here, we will consider the issues to have been abandoned by the protester. Precision Echo, Inc., B-232532, Jan. 10, 1989, 89-1 CPD ¶ 22. Thus, we dismiss this aspect of the protest.3/

In its comments on the agency report and the bid protest conference, RRRS for the first time argues that discussions were not meaningful because the agency failed to advise the firm that its price was unrealistic. This argument is untimely and will not be considered. Our Bid Protest Regulations require that a protest be filed within 10 working days after the basis of protest is known or should have been known. 4 C.F.R. § 21.2(a)(2) (1990). Each new protest ground must independently satisfy the timeliness requirements of our Regulations, which do not contemplate the piecemeal presentation or development of protest issues, with the possible resulting disruption of the procurement of goods and services indefinitely. Consolidated Devices, Inc., B-232651, Dec. 20, 1988, 88-2 CPD ¶ 606. Here, the agency's record of the debriefing held on October 5, 1990, which is undisputed by the protester, indicates that the protester was advised that "the government did not understand how [the protester's] price

2/ Specifically, the agency maintains that meaningful discussions were conducted as follows. First, the agency orally requested the protester to submit; (1) a specific, detailed, and complete statement showing how RRRS proposed to accomplish the work, and (2) a quality control plan, both as requested in the solicitation. Second, subsequent to oral discussions, the agency submitted the following written discussion questions to the protester:

"1. Your proposal sets forth changes you would make in current operations without setting forth what current operations are.

2. Your current proposal does not contain a clearly defined quality control portion which addresses PPSO specific functions for which the contractor will be responsible."

3/ In any event, we agree with the agency that written discussions were sufficient to have led the protester into the areas of deficiency, and therefore met the FAR standard for meaningful discussions. See FAR § 15.610(c)(2) and (5); Questech, Inc., B-236028, Nov. 1, 1989, 89-2 CPD ¶ 407.

was realistic." Since the protester's allegation as to discussions on this point was not raised until over 2 months after October 5, the date when the protester first knew of this basis of protest, it will not be considered.^{4/}

Subsequent to the bid protest conference held in our Office, when RRRS learned that North had proposed personnel employed by the third party incumbent contractor, RRRS filed a supplemental protest alleging that North was given a competitive advantage in the preparation of proposals. The protester contends that North must have been advised of the availability of the incumbent's personnel prior to the agency's August 29 written request for revised proposals, which specifically mentioned incumbent personnel could be proposed for hire. The basis for the protester's contention is its belief that North could not have arranged for incumbent employee commitments in the short time between the August 29 notification date and the August 31 deadline for receipt of revised proposals.

This allegation is without merit. The agency states that all offerors were first advised of the possibility of hiring incumbent employees on August 28 during oral discussions and that this information was repeated in the August 29 written request for revised proposals. There is no evidence in the record that the agency gave notice to North of the availability of incumbent personnel prior to August 28 or, in fact, that North was on notice before RRRS. North itself has responded that it believed it was not authorized to communicate with incumbent personnel prior to the agency's August 29 advisement and in fact did not contact any incumbent personnel prior to that date. Thus, there is no basis for finding that the competition was conducted on an unequal basis.

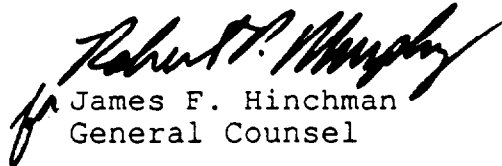
In its initial protest, RRRS argued that North lacked the required prior experience performing contracts covering services similar to the services contained in the RFP here. In its comments on the agency's report and in a supplemental protest, the protester argues more specifically that North's president and owner lacks the required experience. We will

^{4/} In any event, written discussion questions submitted to the protester included the comment, "Questions have arisen as to the price realism of your proposal, i.e., can the outlined number of people perform the requirements, be adequately compensated, and there still remain revenue for operating expenses and profit." In our view, this comment clearly was adequate to impart sufficient information to the offeror to afford it a fair and reasonable opportunity to identify and correct the deficiency in its proposal in this area. InterAmerica Research Assocs., Inc., B-237306.2, Feb. 20, 1990, 90-1 CPD ¶ 293.

not consider this ground of protest because the protester is not an interested party to protest award to North.

Under the Competition in Contracting Act of 1984 and our Bid Protest Regulations, a protester must qualify as an interested party before its protest may be considered by our Office. See 31 U.S.C. § 3553 (1988); 4 C.F.R. § 21.1(a). That is, a protester must have a direct economic interest which would be affected by the award of a contract or the failure to award a contract. 31 U.S.C. § 3551(2); 4 C.F.R. § 21.0(a). Here, RRRS' proposal was determined to be technically unacceptable and RRRS has presented no timely argument that would warrant disturbing the agency's conclusion in this regard. Further, as we have determined there was no unequal competition, the firm would not be in line for award of this contract even if it were to prevail in its protest of the award to North; the third offeror, Trionics, whose proposal was determined technically acceptable, would be in line for award. Hence, RRRS is not an interested party eligible to challenge the award under 4 C.F.R. § 21.0(a), and we therefore will not consider this aspect of the protest. Federal Information Technologies, Inc., B-240855, Sept. 20, 1990, 90-2 CPD ¶ 245.

The protests are dismissed in part and denied in part.


for James F. Hinchman
General Counsel